WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266−1946

Richard Sweet
Assistant Director
(608) 266−2982

David J. Stute, Director
Legislative Council Staff
(608) 266−1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701−2536
FAX: (608) 266−3830

CLEARINGHOUSE RULE 97−033

Comments

[NOTE: All citations to "Manual" in the comments below are to the <u>Administrative Rules Procedures Manual</u>, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. SECTION 12 of this rule-making order creates s. DWD 290.025 which establishes a state-sponsored "trainee program" in order to "allow employers to introduce unskilled workers to the construction trades." The rule sets forth training program requirements and provides that trainees shall be paid "at least the applicable minimum wage rate" rather than a prevailing wage rate.

The department does <u>not</u> appear to have the statutory authority to adopt this rule as part of its rules relating to the determination and administration of prevailing wage rates for state and local public works contracts. Section DWD 290.025 establishes a training program that has no relationship or bearing on prevailing wage rate determinations or the administration of that state program. Further, the rule does not appear to be authorized under any of the three prevailing wage rate statutes [ss. 66.293, 103.49 and 103.50, Stats.] or the boilerplate authorization of s. 103.005 (1), Stats.

b. SECTION 13 of this rule-making order expands the scope of s. DWD 290.03 to authorize the establishment of a prevailing wage rate for a "subjourneyperson" category in the construction trades. However, s. DWD 290.03 (2) (c) requires a ratio at the work site of not more than "one subjourneyperson for each two journeypersons."

Once again, this provision appears to be a "work rule" that has nothing to do with the determination and administration of prevailing wage rates on public works projects. As a result, there appears to be no statutory authority for including the subject matter of par. (c) as a portion of this rule submission.

2. *Form, Style and Placement in Administrative Code*

a. In the treatment clause of SECTION 1, insert "Chapter" before "ILHR."

b. Section DWD 290.001 states that the rule applies to all prevailing wage rate determinations under ss. 66.293 and 103.49, Stats. However, the introduction to s. ILHR 290.01 states that the definitions in that section apply to wage rate determinations made by the department pursuant to s. 66.293, Stats. The department should ensure that the cross-references in ch. DWD 290 refer to s. 103.49, Stats., when appropriate. Also, in s. DWD 290.001, the word "section" should be replaced by the word "chapter."

c. The definitions in s. DWD 290.001 should be alphabetized.

d. SECTION 6 of the rule should be redrafted as two separate SECTIONS of the rule-making order. The treatment clause of the first SECTION should provide that "DWD 290.01 (7) is renumbered DWD 290.01 (7) (a) and amended to read:". The treatment clause of the next SECTION should provide that "DWD 290.01 (7) (b) is created to read:". The introductory clause should also be redrafted to reflect these changes. [See ss. 1.02 (1) and 1.04 (2), Manual.]

e. In s. DWD 290.015 (6), delete "statute" and substitute "s. 66.293 (3) (bm) or 103.49 (3) (b), Stats."

f. The Note following SECTION 11 and other sections of the rule-making order indicate that certain materials are included in an Appendix. However, the text of the Appendix has not been included with the rules. This Appendix should have been included as part of the rules submitted to the Rules Clearinghouse.

g. In s. DWD 290.025 (2) (intro.), the word "must" should be replaced by the word "shall."

h. In s. DWD 290.025 (2) (c), the second sentence is not substantive material and should be contained in a note to the rule.

i. In s. DWD 290.035, the use of parenthetical remarks should be avoided. For example, in sub. (1) (b), the phrase "greenhouses (not incidental to retail)" can be replaced by the phrase "greenhouses that are not incidental to retail."

j. Section DWD 290.035 (3) (a) should conclude with the phrase "under subs. (1), (2), (4) and (5)."

k. In the second sentence of s. DWD 290.10 (3), substitute "shall" for "will." [See s. 1.01, Manual.]

l. In s. DWD 290.12 (2), the word "must" should be replaced by the word "shall."

m. In SECTION 22, delete all the material after "below" and substitute:

> ~~$11,000, where a single trade is involved, and $110,000 where more than one trade is involved on such project~~ $30,000, and any

> multi-trade public works project for which the estimated cost of completion is below $150,000.

2.   Form, Style and Placement in Administrative Code

Sections DWD 290.015 (2) and 290.025 (2) (a) refer to forms. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

5.   Clarity, Grammar, Punctuation and Use of Plain Language

a.   In s. DWD 290.015 (3), delete the first three commas in the first sentence which are unnecessarily confusing. Also, delete "its successor" and substitute "a successor agreement that is."

b.   In s. DWD 290.025 (1), the word "employers" in the last sentence should be replaced by the word "employer."

c.   Section DWD 290.025 (2), (3) and (5) imply that a training program may be approved by the department. A positive statement of the department's responsibility or authority to approve a training program should be included in this section.

d.   In s. DWD 290.03 (3) (b), delete the third comma. Also, in order to fully comport with the provisions of ss. 66.293 (4) (a) 1. and 103.49 (2m) (a) 1., Stats., it appears in s. DWD 290.03 (3) (b) that the last occurence of the word "or" should be replaced by the word "and."

e.   The third sentence of s. DWD 290.035 (5) (a) should be deleted. The four-story limitation is adequately stated in the first sentence and in par. (b) and, therefore, the third sentence is redundant.

f.   In s. DWD 290.10 (2) (d), reference is made to wage information for the contested trade or occupation on at least three similar projects. Paragraph (e) then refers to wage information from projects of the same type as the proposed project. Paragraph (e) appears to be redundant, given the language in par. (d). Is par. (e) necessary?